

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
NORTH SHORE WATER COMPANY, LLC )  
For a Certificate of Public )  
Convenience and Necessity to )  
Provide Water Services on the )  
Island of Oahu, District of )  
Waialua, and for Approval of Rules )  
And Rates. )

DOCKET NO. 2008-0180

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2009 JAN -2 A 8:19

DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

ORDER DENYING INTERVENTION AND GRANTING PARTICIPATION

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2008 DEC 31 A 8:16

DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

PUBLIC UTILITIES  
COMMISSION

2008 DEC 31 P 2:00

FILED

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Provide Water Services on the  
Island of Oahu, District of  
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And Rates.

By this Order, the commission denies MOKULEIA BEACH COLONY's ("MBC") Motion to Intervene. The commission, however, will allow MBC to participate without intervention in this proceeding.

On September 12, 2008, NORTH SHORE WATER COMPANY, LLC ("NSWC") filed an application requesting a certificate of public convenience and necessity ("CPCN") to provide water service in Mokuleia, in the district of Waialua, on Oahu and approval of its proposed rates, charges and rules ("Application").<sup>1</sup> With respect to rates, NSWC requested approval of a rate increase of

<sup>1</sup>Copies of the Application were served on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"). The Consumer Advocate is an ex officio party to this proceeding pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62.

approximately \$90,160 or about 175.55%, over total revenues at present rates for the calendar 2009 test year ("Test Year"). The requested increase is based on an estimated revenue requirement of \$141,520 for the Test Year, and a proposed rate of return of 0.4185%. NSWC also requested approval to establish a Repair and Maintenance Reserve of \$12,518 for the Test Year.<sup>2</sup> NSWC filed its Application pursuant to HRS §§ 269-7.5 and 269-16, as amended, and HAR §§ 6-61-74 and 6-61-75.

Pursuant to HRS §§ 269-16 and 269-12, the commission held a public hearing regarding NSWC's Application on November 10, 2008, at Waialua High and Intermediate School cafeteria, at 6:00 p.m. (the "Public Hearing").<sup>3</sup> During the Public Hearing, representatives of NSWC and the Consumer Advocate provided oral and written testimonies. Oral and written testimonies from various ratepayers and concerned citizens were also received by commission during the Public Hearing. Oral statements and testimonies presented during the Public Hearing were transcribed and filed with the commission on November 25, 2008 ("Transcript").

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<sup>2</sup>Specifically, NSWC is proposing to: (1) increase its Monthly Water Consumption Charge and exchange its current Billing Charge for a new monthly Meter Charge, see Application, Exhibit NSWC 104; (2) impose an Automatic Power Cost Adjustment Clause to cover the increasing cost of electricity; (3) establish a Repair and Maintenance Reserve through an additional assessment of \$0.35 per each 1,000/gallons of water consumed by customers who receive water from NSWC's bulk meters; and (4) establish its rules governing water service.

<sup>3</sup>The commission published its Notice of Public Hearing ("Hearing Notice") in various newspapers statewide, in accordance with HRS §§ 1-28.5 and 269-16. Specifically, the Hearing Notice was published on October 19, 27 and November 3 and 9, 2008, in the Honolulu Star Bulletin, the Hawaii-Tribune Herald, West Hawaii Today, the Garden Island, and The Maui News.

On October 9, 2008, prior to the Public Hearing, MBC filed its Motion to Intervene and, then, on October 14, 2008, MBC filed its Memorandum in Support of its Motion to Intervene ("Memorandum") (collectively, "Motion to Intervene"). No response to the Motion to Intervene was filed in this proceeding.

## II.

### Intervention and Participation

HAR § 6-61-55 sets forth the requirements for intervention in commission proceedings. It states, in relevant part:

- (a) A person may make an application to intervene and become a party by filing a timely written motion in accordance with sections 6-61-15 to 6-61-24, section 6-61-41, and section 6-61-57, stating the facts and reasons for the proposed intervention and the position and interest of the applicant.
- (b) The motion shall make reference to:
  - (1) The nature of the applicant's statutory or other right to participate in the hearing;
  - (2) The nature and extent of the applicant's property, financial, and other interest in the pending matter;
  - (3) The effect of the pending order as to the applicant's interest;
  - (4) The other means available whereby the applicant's interest may be protected;
  - (5) The extent to which the applicant's interest will not be represented by existing parties;

- (6) The extent to which the applicant's participation can assist in the development of a sound record;
- (7) The extent to which the applicant's participation will broaden the issues or delay the proceeding;
- (8) The extent to which the applicant's interest in the proceeding differs from that of the general public; and
- (9) Whether the applicant's position is in support of or in opposition to the relief sought.

HAR § 6-61-55(a) and (b). HAR § 6-61-55(d) further states that "[i]ntervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented."<sup>4</sup>

In addition, HAR § 6-61-56 sets forth the requirements for participation without intervention in commission proceedings. Similar to the requirements for intervention in HAR § 6-61-55, HAR § 6-61-56 provides in relevant part:

- (b) A person who has a limited interest in a proceeding may make an application to participate without intervention by filing a timely written motion in accordance with sections 6-61-15 to 6-61-24, section 6-61-41, and section 6-61-57.
- (c) The motion shall provide:
  - (1) A clear and concise statement of the direct and substantial interest of the applicant;

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<sup>4</sup>See also In re Application of Hawaiian Elec. Co., Inc., 56 Haw. 260, 262, 535 P.2d 1102, 1104 (1975) (intervention "is not a matter of right but a matter resting within the sound discretion of the commission").

- (2) The applicant's position regarding the matter in controversy;
- (3) The extent to which the participation will not broaden the issues or delay the proceeding;
- (4) The extent to which the applicant's interest will not be represented by existing parties;
- (5) A statement of the expertise, knowledge or experience the applicant possesses with regard to the matter in controversy;
- (6) Whether the applicant can aid the commission by submitting an affirmative case; and
- (7) A statement of the relief desired.

HAR § 6-61-56(b) and (c). Moreover, regarding the extent to which a participant may be involved in a proceeding, HAR § 6-61-56(a) provides:

The commission may permit participation without intervention. A person or entity in whose behalf an appearance is entered in this manner is not a party to the proceeding and may participate in the proceeding only to the degree ordered by the commission. The extent to which a participant may be involved in the proceeding shall be determined in the order granting participation or in the prehearing order.

HAR § 6-61-56(a).

A.

MBC's Motion to Intervene

In its motion, MBC states that it is an association of homeowners and that its members are consumers of water delivered by NSWC. According to MBC, it has a right to intervene since it has a direct interest in the water system and would be

directly affected by the commission's decision with respect to NSWC's Application since MBC members are NSWC's customers. MBC contends that its "input is essential to the development of a sound record because its members are the consumers of the water being provided by North Shore Water Company and can provide first hand knowledge based on experience and fact to the commission."<sup>5</sup> Moreover, it states that its participation will not broaden the issues of this proceeding or delay it.

Upon review, the commission finds that MBC's Motion to Intervene fails to sufficiently satisfy the requirements of HAR § 6-61-55(b). Aside from noting its interest in this proceeding as a consumer of water service, MBC does not provide any other description of its "property, financial, and other interest" in this proceeding. Further, while stating that its interest is not represented by any other party to this proceeding and that it is unaware of any other available means to protect its interests, MBC provides no elaboration with regards to its statements. In addition, MBC fails to describe how its interests are distinct from those represented by the Consumer Advocate. As specifically stated in HRS § 269-51, the Consumer Advocate is statutorily required to "represent, protect, and advance the interests of all consumers, including small businesses, of utility services." Further, MBC fails to describe the extent to which its participation will not broaden the issues or delay the proceeding, and the extent to which its interest in the proceeding differs from that of the general public.

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<sup>5</sup>See Memorandum at 2.

Given that MBC has not met its burden of demonstrating why it should be allowed to intervene in this proceeding, the commission concludes that MBC's Motion to Intervene should be denied.

B.

Grant of Participation Without Intervention

Although intervention by MBC is inappropriate, the commission finds that MBC could still contribute meaningfully as a participant in this proceeding. Even though MBC's interests appear to be protected, represented, and advanced by the Consumer Advocate, there is an opportunity in this proceeding for MBC to assist the commission in understanding certain unique issues with regards to NSWC's water service that may affect this proceeding.<sup>6</sup> Furthermore, the commission believes that MBC's participation in this proceeding could also assist the commission by providing historical background information that may need to be examined for the just and reasonable resolution of certain issues of this proceeding. The commission notes that MBC's June 7, 2004 informal complaint brought to the commission's attention concerns with regards to water service provided by NSWC's predecessor, Mokuleia Water, LLC ("MWL"), which was the basis of the commission's proceeding in Docket No. 05-0009. In Docket No. 05-0009, the commission,

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<sup>6</sup>See Transcript at 14-16.



among other things, determined that MWL is a public utility, as defined by HRS § 269-1; and required MWL (now NSWC) to apply for a CPCN to provide water service to its customers.

Based on the foregoing, the commission concludes that MBC should be allowed to participate without intervention in this docket. However, MBC's participation in this proceeding shall, unless otherwise ordered by the commission, be limited to receiving copies of all filings (on a going forward basis), responding to information requests, and filing a final position statement in this proceeding.

#### C.

##### Conditions

HRS § 269-16(f)(3) requires the commission to, among other things, complete its review and issue its proposed decision and order within the six-month period prescribed in the subsection. Accordingly, the commission will preclude any effort by MBC to unreasonably broaden the pertinent issues or unduly delay the proceeding. Similarly, the commission will reconsider MBC's participation in this docket if, at any time during the course of this proceeding, the commission determines that MBC is unreasonably broadening the pertinent issues or unduly delaying the proceeding.

#### III.

##### Orders

##### THE COMMISSION ORDERS:

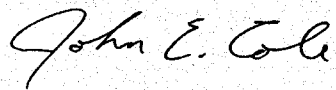
1. MBC's Motion to Intervene is denied.

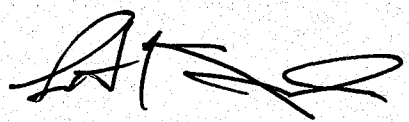
2. MBC shall be allowed to participate without intervention in this proceeding. MBC's participation in this proceeding shall, unless otherwise ordered by the commission, be limited to receiving copies of all filings (on a going forward basis), responding to information requests, and filing a final position statement in this proceeding.

DONE at Honolulu, Hawaii DEC 31 2008.



PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By:   
Carlito P. Caliboso, Chairman

By:   
John E. Cole, Commissioner

By:   
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

   
Ji Soek Kim  
Commission Counsel

2008-0180.laa

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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